

1977

## c 55 The Income Tax Discounters Act, 1977

Ontario

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## CHAPTER 55

## An Act to regulate the Discounting of Income Tax Refunds

*Assented to November 25th, 1977*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "discounter" means a person, including an agent or broker, who, acting in the course of business, acquires from a taxpayer the taxpayer's right to a refund which is due or will become due to the taxpayer;
- (b) "Minister" means the Minister of Consumer and Commercial Relations;
- (c) "refund" means the amount which an individual is entitled to receive,
  - (i) as an overpayment of the income tax paid by him or on his behalf under *The Income Tax Act* or the *Income Tax Act* (Canada) and interest on the overpayment, R.S.O. 1970,  
c. 217  
R.S.C. 1952,  
c. 148
  - (ii) as an overpayment of unemployment insurance premiums paid by him or on his behalf under the *Unemployment Insurance Act, 1971* (Canada), 1970-71-72,  
c. 48 (Can.)
  - (iii) as an overpayment of contributions paid by him or on his behalf under the *Canada Pension Plan*, R.S.C. 1970,  
c. C-5
  - (iv) as a tax credit under section 6b of *The Income Tax Act*, or
  - (v) as a grant or refund under an Act of Canada, Ontario or of any other province;

(d) "regulations" means the regulations made under this Act;

(e) "taxpayer" means an individual other than a discounter who has the right to receive a refund.

Matters  
to be  
specified by  
discounter

2. Before a discounter may acquire from a taxpayer the right to receive a refund which is due or will become due to the taxpayer, the discounter shall specify in writing to the taxpayer the terms of the acquisition including,

(a) the amount of the refund that the discounter believes is due or will become due to the taxpayer;

(b) the amount to be paid by the discounter for the refund which is due or will become due; and

(c) the difference between the amounts referred to in clauses *a* and *b*, which is the amount that the taxpayer will forego as a result of the discounting agreement.

Maximum  
discount

3. No acquisition by a discounter of a right to receive a refund from a taxpayer shall be valid if the actual consideration given for the right by the discounter to the taxpayer is less than 95 per cent of the amount of the refund which is due or will become due to the taxpayer, or such greater amount as may be prescribed by the regulations.

Charge for  
service

4. No discounter shall make an unreasonable charge for any service, including the completing of the income tax return of a taxpayer, and, in determining whether a charge is unreasonable, consideration shall be given to the time spent completing the return and the complexity of the return and the necessity of the service to facilitate the taxpayer receiving a refund which is due or will become due.

Remitting  
excess  
payment

5. Where, in respect of a taxpayer, a discounter receives an amount which exceeds the amount referred to in clause *a* of section 2,

(a) the excess amount shall be remitted forthwith by the discounter to the taxpayer; or

(b) if the discounter is not able to locate the taxpayer and remit the excess to the taxpayer, the discounter shall, within thirty days from the date of receipt of the excess, remit the excess to the Receiver General of Canada to be credited to the taxpayer's account.

6. The taxpayer may recover from the discounter as a simple contract debt the excess amount required to be paid by section 5 which has not been paid by the discounter as required by section 5. Recovery of excess payment

7. A discounter shall, by the 31st day of July of each year, file with the Minister in the prescribed form, Return filed by discounter

- (a) the name and address of each taxpayer whose refund was acquired;
- (b) the amount of the refund;
- (c) the amount that was paid to the taxpayer; and
- (d) the amount actually received by the discounter pursuant to the refund acquired,

for the year ending with the 30th day of June.

8. Every discounter who acquires from a taxpayer the right to receive a refund which is due or will become due shall keep posted in a prominent location on his business premises a notice informing the taxpayer of the provisions of this Act, and the form and wording of the notice may be prescribed by the regulations. Notice to be posted

9. The discounter shall retain in his place of business proper records and books of account showing moneys disbursed and received, the name of every person who has had his return or right to a return acquired by a discounter, and the last known address of every such person. Records to be kept by discounter

10.—(1) Every person who contravenes this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000. Penalty

(2) Where a person is convicted of an offence under section 4 or 5, the provincial judge making the conviction shall, in addition to the fine imposed pursuant to subsection 1, order that the person convicted pay the taxpayer any amount that the provincial judge finds is owing to the taxpayer. Compensation in addition to fine

(3) Where a corporation contravenes any provision of this Act or the regulations, an officer, director or agent of the corporation or a person purporting to act in any such capacity who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and is liable on conviction to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted. Officers, etc., liable



Onus of  
proof

(4) In determining whether for the purposes of subsection 3 an officer, director or agent of the corporation or a person purporting to act in any such capacity authorized, permitted or acquiesced in the contravention of any provision of this Act or the regulations, it shall be for the officer, director or agent or person purporting to act in any such capacity to prove that he did not authorize, permit or acquiesce in the contravention.

Order may  
be filed

(5) An order for payment under subsection 2 may be filed by the taxpayer in a court of competent jurisdiction and thereupon the order shall be deemed to be an order of that court for the purposes of enforcement.

Regulations

11. The Lieutenant Governor in Council may make regulations,

- (a) requiring that the discounter file with the Minister, copies of all agreements, forms and other documents that he intends to use in acting as a discounter;
- (b) prescribing anything that by this Act is to be prescribed;
- (c) prescribing the form and wording of notice required by section 8 and the manner of exhibiting the notice; and
- (d) prescribing the percentage amount of the consideration in respect of an assignment of a refund for the purposes of section 3.

Commence-  
ment

12. This Act comes into force on the day it receives Royal Assent.

Short title

13. The short title of this Act is *The Income Tax Discounters Act, 1977*.